

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ORDER NO. 964
Z.C. Case No. 01-29MA
(Map Amendment – Square 442, Lots 864 and 865)
September 9, 2002

The United House of Prayer for All People, pursuant to 11 DCMR § 102.2(a), filed an application with the Zoning Commission on November 8, 2001, to amend the Zoning Map to rezone Lots 864 and 865 in Square 442, with a street address of 626 S Street, N.W., from R-4 to C-2-B. After a public hearing, the Commission took action to rezone the property ARTS/C-2-B.

PROCEDURAL BACKGROUND

Public Notice. The Office of Zoning published a notice of the filing of the application in the *D.C. Register* on November 30, 2001, at 48 DCR 11,023. The notice of the public hearing on the application was published in the *D.C. Register* on May 17, 2002, at 49 DCR 4554. Notice was also published in *The Washington Times*, a newspaper of general circulation, on June 6, 2002. A copy of the notice was posted in the Office of Zoning, and copies were provided to the District of Columbia public library system. Notice was also timely mailed to the owners of all property within 200 feet of the subject property; the District of Columbia Office of Planning; Advisory Neighborhood Commission (ANC) 2C, the ANC for the area within which the property is located; the Office of the Advisory Neighborhood Commissions; the Ward 2 Councilmember; and the Zoning Administrator.

The property, however, was not posted until July 19, 2002, seven days before the hearing, whereas the Commission's Rules of Practice and Procedure in 11 DCMR § 3015.4 require posting at least 40 days before the hearing. The applicant indicated that in addition to the notice that had been provided, it had presented its proposal to the ANC and had engaged in numerous meetings and discussions with community members regarding the application. At the applicant's request, the Commission waived the 40-day requirement pursuant to § 3000.8, determining that given the extensive notice provided through other means, the waiver would not prejudice the rights of any party and was not otherwise prohibited by law.

D.C. Office of Planning (OP) Reports. In its preliminary report dated February 11, 2002, OP recommended that the application be amended to include the property within the ARTS Overlay

District. Based on OP's report, the Commission voted on February 11, 2002, to set the matter for hearing for consideration of a proposed zoning change to ARTS/C-2-B.

In its final report dated July 15, 2002, OP recommended that the Commission approve the map amendment. OP stated that the application conforms with the Comprehensive Plan's recommendation for development close to metrорail stations, and that it will greatly contribute towards revitalization of the neighborhood. In addition, the proposed rezoning will further the public goals of providing affordable housing units throughout the city. The Commission, which is required under D.C. Code, 2001 Ed. § 6-623.04 to give great weight to OP's recommendations, agrees that for the reasons stated in OP's report, the application should be approved.

ANC Report. In its report dated July 11, 2002, ANC 2C indicated that at a properly noticed meeting, with a quorum present, and after hearing the applicant's presentation of the project and the reasons for the map amendment, ANC 2C voted to support the requested map amendment. The Zoning Commission is required under § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; D.C. Code, 2001 Ed. § 1-309.10(d)(3)(A)), to give great weight to the issues and concerns raised in the affected ANC's recommendations. For the reasons stated in this order, the Zoning Commission agrees with the ANC's recommendation that the application should be approved.

Public Hearing. The Commission held a public hearing on the application on July 25, 2002. Alexander M. Padro, ANC 2C-01 Single-Member District Commissioner, citing concerns over traffic congestion and a limited amount of on-street parking, requested that the map amendment be conditioned to prohibit the future residents and occupants of the apartment house from owning automobiles. Such a condition, however, would not be appropriate in a map amendment case, would jeopardize the marketability of the dwelling units, and would, in all likelihood, be unenforceable. The Commission also received a letter from Ward 2 Councilmember Jack Evans supporting the requested rezoning on the grounds that it would allow the applicant to revitalize a vacant and dilapidated apartment house, and that it would be consistent with Comprehensive Plan goals to increase density around metrорail stations and to increase affordable housing stock. No other oral or written comments on the application were received.

Proposed Action. At the conclusion of the public hearing on July 25, 2002, the Commission took proposed action to approve the rezoning of the property to ARTS/C-2-B.

FINDINGS OF FACT

1. The subject property, Lots 864 and 865 in Square 442, is located at 626 S Street, N.W., on the south side of S Street, in the Shaw neighborhood.
2. The property encompasses an area of approximately 8,076 square feet. There is a 15-foot wide public alley along its western boundary, and a 20-foot alley to the south. Lot 864 is

developed with a three-story apartment house that is currently vacant; and lot 865, to the rear, is undeveloped.

3. The property is generally bounded by S Street to the north, 6th Street to the east, R Street/Rhode Island Avenue to the south, and 7th Street to the west. The surrounding area is developed with a variety of uses, including row dwellings, apartment houses, churches, institutional uses, and retail stores. There are a number of vacant buildings, including a three-story building that housed the former Wonder Bread Bakery. The Howard University and Hospital are located to the north of the site. The subject property is located almost directly across the street from the Shaw – Howard University Metrorail Station entrance, located at the northeast corner of 7th and S Streets.
4. The property is currently zoned R-4. The surrounding areas are zoned R-4 and ARTS/C-2-B. The R-4 District covers the area generally northeast and south of S Street, while the areas west and north of the subject property are zoned ARTS/C-2-B. The Shaw – Howard University Metrorail Station is zoned ARTS/C-2-B.
5. The R-4 District is designed to include areas developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into flats or multiple dwellings. The R-4 District permits as a matter of right one-family dwellings and flats. While the R-4 District is not an apartment house district, it permits as a matter-of-right the conversion of a building existing before May 12, 1958, to an apartment house, subject to certain conditions, including the minimum lot area requirement under § 401.3 of 900 square feet per dwelling unit. The primary purpose of the R-4 District is, however, the stabilization of the remaining one-family dwellings. The R-4 District permits a maximum height of three (3) stories and forty (40) feet; sixty percent (60%) lot occupancy for row dwellings, flats, churches, and public schools; and forty percent (40%) lot occupancy for all other structures. The regulations do not prescribe a maximum FAR limitation. 11 DCMR §§ 330, 400.1, 401.3, 402.4, 403.2.
6. The C-2-B District is a Community Business Center District. As described in §§ 720.6 through 720.8, the C-2-B Districts are designated to serve commercial and residential functions, with high-density residential and mixed uses. The C-2-B Districts are compact, and located on arterial streets, in uptown centers, and at rapid transit stops.
7. The Uptown Arts-Mixed Use (ARTS) Overlay District is mapped in combination with underlying Commercial and Mixed Use Districts. Among other purposes, the ARTS Overlay District seeks to encourage the development of a mixture of building uses, including residential, retail, and entertainment uses; to provide for an increased presence and integration of arts and arts-related uses; to expand the area's housing supply in a variety of rent and price ranges; to expand business and job opportunities, and encourage development of residential and commercial buildings; and to foster eighteen-hour activity and increased public safety. See 11 DCMR § 1900.2.

8. Together, the ARTS Overlay District and the C-2-B District permit matter-of-right development of residential, office, retail and service, and arts and arts-related uses to a maximum floor area ratio (FAR) of 3.5 (which may consist entirely of apartment house or other residential use, or up to 1.5 FAR of other permitted uses), a maximum lot occupancy of eighty percent (80%), and a maximum height of sixty (65) feet, with no limitation on the number of stories. 11 DCMR §§ 770.1, 771.2, 772.1. Under § 1904.1(b), a project that devotes gross floor area to one of the preferred uses listed in § 1904.2 is eligible for bonus density, up to a maximum of 4.5 FAR.
9. The northern portion of the subject property, Lot 864, is developed with a 3-story, 12-unit apartment house that has been vacant for a number of years. The building was constructed before the adoption of the current Zoning Regulations in 1958, and is a nonconforming use in the R-4 District. Under the zoning regulations applicable to nonconforming uses and structures, the applicant may, without zoning relief, renovate but not replace the existing building. Apart from the building's age, the apartment units are very small, approximately 350 square feet each, and do not meet current construction code standards. Even with some renovation, the existing building would remain substandard, as the building lacks sufficient space to upgrade the heating/cooling system. The remainder of the property, Lot 865, is vacant.
10. Given the R-4 zoning, the long, narrow shape of the property limits the applicant's development options. In 2001, the applicant sought variance relief to permit the demolition of the existing apartment house, to be replaced with an apartment house that would exceed the lot occupancy limit. The Board denied the request, which entailed both use and area variances, as the applicant was able to develop the property with a matter-of-right project, albeit one that would result in under-utilization of the site and that would not achieve the applicant's housing goals. The Board advised the applicant that a more appropriate avenue for zoning relief would be through the map amendment process.
11. The requested map amendment will allow the applicant to develop the site with a 3-story, mixed-use building, with retail uses and an art studio on the first floor and apartments on the second and third floors. The upper floors will have 16 apartment units ranging in size from 525 square feet to 1,134 square feet. An open court will provide a landscaped recreation area. Five (5) parking spaces, in compliance with the § 2101.1 schedule of required parking spaces, will also be provided.
12. The subject property, which is directly across from the metrorail station, as well as bus lines on Georgia Avenue, is adequately served by public transportation. Given the small size of the property, development to the maximum FAR would not produce an appreciable impact on traffic in the area.
13. The Comprehensive Plan Generalized Land Use Map recommends for the subject property a mixture of moderate-density residential uses, which allows row dwellings and garden apartments, and moderate-density commercial uses, which allows shopping and service uses.

14. A major policy of the Housing Element of the Comprehensive Plan, 10 DCMR § 302.2(e), is to, “Encourage housing on suitably located public and private properties that are vacant, surplus, underutilized, or unused . . . with particular emphasis on the needs of low- and moderate-income residents.”
15. Policies in support of the residential neighborhood objectives promote the conservation, enhancement, and revitalization of the residential neighborhoods of the District of Columbia for housing and neighborhood-related uses. 10 DCMR § 1104.1(a).
16. The Ward 2 Plan outlines objectives to stimulate new and rehabilitated housing for all income levels, and to protect diversity and encourage more market-rate housing. An objective for housing, § 1304.1(a), is to, “Stimulate production of new and rehabilitated housing to meet all levels of need and demand and provide incentives for the types of housing needed at desired locations.” Another objective, in § 1304.1(b), is to, “Provide for the housing needs of low- and moderate-income households.” The Ward 2 Plan also recommends in § 1305.1 targeting development opportunity areas where significant housing development can appropriately occur and encouraging multi-unit housing development, including market rate and low-density housing, where appropriate.
17. The Comprehensive Plan also emphasizes multi-family development near metrorail stations. 10 DCMR §§ 1134.1, 1136.1.
18. With respect to arts, cultural, and educational uses, the Comprehensive Plan in § 1336.1(c) encourages these uses to link facilities along the U Street corridor to the Howard Theater at 7th Street. Including the subject property within the ARTS Overlay District will further this Ward 2 Plan objective.
19. Based on the above, the Commission finds that the proposed map amendment from R-4 to ARTS/C-2-B will promote the general welfare of the District of Columbia by facilitating the development potential of the property and by providing residential development in the surrounding area, which is in close proximity to a metrorail station. The redevelopment of the site will bring into active use a property that is currently occupied by a boarded-up, uninhabitable building. The size and shape of the property are suitable for more intense development than would be allowed under the current R-4 zoning. The rezoning will allow the development of the site consistent with other similar type developments nearby. Rezoning will thus further the planning and orderly development of the District of Columbia as the national capital.
20. Rezoning the property to ARTS/C-2-B is consistent with the zoning of the properties to the west and north of the site, which are zoned ARTS/C-2-B and developed with a combination of residential uses and ground floor commercial uses, and with the zoning of the Shaw - Howard University Metrorail Station. Rezoning will allow development at a scale that does not impact existing residences, and that is consistent with adjacent

properties. It will not produce objectionable traffic conditions and will not lead to the overcrowding of land.

21. The Commission finds that the requested rezoning will further Comprehensive Plan policies and objectives relating to land use, housing, and arts, by replacing an uninhabitable apartment house in close proximity to a metrorail station with a mixed-use development that includes arts use on the first floor, contributing to the revitalization of the neighborhood.
22. The proposed map amendment was referred to the National Capital Planning Commission (NCPC) under the terms of § 492 of the District of Columbia Charter. NCPC, by report dated September 6, 2002 found that the proposed map amendment would neither adversely affect the federal interests, nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The Zoning Commission is authorized under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended, D.C. Code, 2001 Ed. § 6-641.02), to amend the Zoning Map.
2. The public notice, public hearing, and NCPC referral requirements for the map amendment, including the requirements in 11 DCMR §§ 102.6 – 102.9, 3015, and 3028, have been met.
3. The Commission concludes that the requested map amendment will promote the general welfare of the District of Columbia and further its planning and orderly development as the national capital, in that it will allow for the development of a mixed-use building, providing housing, retail, and arts uses, and the replacement of an uninhabitable apartment house with an apartment house meeting current construction code standards. It will contribute to the revitalization of the neighborhood; and will not result in objectionable traffic conditions or the overcrowding of land.
4. The proposed map amendment is not inconsistent with the recommendations of the Generalized Land Use Map for moderate-density residential and commercial uses for the subject property.
5. The Comprehensive Plan encourages increased housing opportunities, a mixture of commercial and residential uses near metrorail stations, revitalizing the area around the Shaw – Howard University Metrorail Station, and providing arts uses in the vicinity of 7th Street. The rezoning of the site to ARTS/C-2-B is not inconsistent with the recommendations of the Comprehensive Plan in these regards.

6. In the event the property is not developed as proposed by the applicant, the permitted scale and intensity of commercial uses allowed under the ARTS/C-2-B zoning will also be compatible with the neighborhood and the policies and objectives of the Comprehensive Plan.
7. Based upon the above findings and conclusions, the Zoning Commission concludes that the requested map amendment is in the best interests of the District of Columbia, consistent with the Zoning Regulations and Map, and not inconsistent with the Comprehensive Plan for the National Capital.

DECISION

1. In consideration of the findings and conclusions set forth in this order, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the following amendment to the District of Columbia Zoning Map:

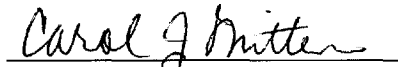
Change the zoning of Lots 864 and 865 in Square 442, located at 626 S Street, N.W., from R-4 to ARTS/C-2-B.

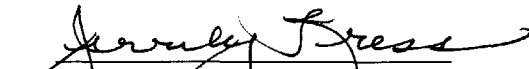
2. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is also prohibited by the act. In addition, harassment based on any of the above-protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

Vote of the Zoning Commission taken after the public hearing held on July 25, 2002, to **APPROVE** the proposed map amendment: **3-0-2** (Anthony J. Hood, James H. Hannaham, and Carol J. Mitten, to approve; John G. Parsons and Peter G. May, not present, not voting).

The Zoning Commission at its public meeting held on September 9, 2002, **ADOPTED** this order by a vote of **3-0-2** (Carol J. Mitten, Anthony J. Hood, and James H. Hannaham to adopt; John G. Parsons and Peter G. May, having not heard the case, not voting).

In accordance with 11 DCMR § 3028, this Order is final and effective upon publication in the *D.C. Register*; that is, on FEB - 7 2003.


CAROL J. MITTEN
Chairperson
Zoning Commission


JERRILY R. KRESS, FAIA
Director
Office of Zoning